

Item SP06-15 Response Form

Title: Disclosure by Trial Court Judges (amend Cal. Code Jud. Ethics, canon 3E(2), and the commentary following canon 3E)

- ☐ Agree with proposed changes
- ☐ Agree with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

(Please print)

Organization: _____

☐ Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, September 1, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Supreme Court.

Title	Disclosure by Trial Court Judges (amend Cal. Code Jud. Ethics, canon 3E(2), and the commentary following canon 3E)
Summary	This proposed amendment provides that a judge must disclose on the record information that the parties or their lawyers might reasonably consider relevant to the question of disqualification, rather than disclosing <i>what the judge believes</i> the parties or their lawyers might consider relevant.
Source	Supreme Court Advisory Committee on the Code of Judicial Ethics
Staff	Mark Jacobson, 415-865-7898, mark.jacobson@jud.ca.gov
Discussion	<p>Currently, canon 3E(2) provides that judges must disclose on the record “information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no actual basis for disqualification.” The Supreme Court Advisory Committee on the Code of Judicial Ethics has recommended to the Supreme Court that it change this language to focus on the perceptions of the parties and their lawyers rather than what the judge believes.</p> <p>The purpose of nondisqualifying disclosure is to provide the parties with information beyond the strict criteria for disqualification for use in a motion to disqualify a judge. With the disclosure requirement currently cast in subjective terms of <i>what the judge believes</i> the parties might consider relevant, the purpose of the disclosure provision may be defeated. By focusing on the subjective belief of the judge, who already has decided the information does <i>not</i> require disqualification, the current language may not advance the reflective consideration the disclosure requirement is intended to promote. The committee concluded that changing the language of the disclosure requirement to focus on the parties and their lawyers would further the purpose of the provision.</p> <p>To avoid excessive and unnecessary disclosure, the committee has recommended adding the word “reasonably” and tying the disclosure to disqualification for cause under Code of Civil Procedure section 170.1. Without the link to section 170.1, parties might argue that certain extraneous information about a judge should be disclosed because the information could lead a party to file a peremptory challenge against the judge.</p>

The commentary following canon 3E would also require amendment because it tracks the current language of the disclosure provision in canon 3E(2).

The text of the proposed amendment to canon 3E(2) and the commentary following canon 3E is attached.

Attachment

Canon 3E(2) of the California Code of Judicial Ethics would be amended, effective January 1, 2007, to read:

CANON 3

A JUDGE SHALL PERFORM THE DUTIES OF
JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A.–D. ***

E. Disqualification

(1) ***

(2) In all trial court proceedings, a judge shall disclose on the record information that the ~~judge believes the~~ parties or their lawyers might reasonably consider relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification.

(3)–(5) ***

ADVISORY COMMITTEE COMMENTARY

Canon 3(E)(1) sets forth the general duty to disqualify applicable to a judge of any court. Sources for determining when recusal or disqualification is appropriate may include the applicable provisions of the Code of Civil Procedure, other provisions of the Code of Judicial Ethics, the Code of Conduct for United States Judges, the American Bar Association's Model Code of Judicial Conduct, and related case law.

Canon 3E(4) sets forth the general standards for recusal of an appellate justice. The term "appellate justice" includes justices of both the Courts of Appeal and the Supreme Court. Generally, the provisions concerning disqualification of an appellate justice are intended to assist justices in determining whether recusal is appropriate and to inform the public why recusal may occur.

However, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must promptly disclose on the record the basis for possible disqualification and use

1 *reasonable efforts to transfer the matter to another judge as soon as*
2 *practicable.*
3

4 *In some instances, membership in certain organizations may have*
5 *the potential to give an appearance of partiality, although membership in*
6 *the organization generally may not be barred by Canon 2C, Canon 4, or*
7 *any other specific canon. A judge holding membership in an organization*
8 *should disqualify himself or herself whenever doing so would be*
9 *appropriate in accordance with Canon 3E(1), 3E(4), or 3E(5) or statutory*
10 *requirements. In addition, in some circumstances, the parties or their*
11 *lawyers may consider a judge's membership in an organization relevant to*
12 *the question of disqualification, even if the judge believes there is no actual*
13 *basis for disqualification. In accordance with this Canon, a judge should*
14 *disclose to the parties his or her membership in an organization, in any*
15 *proceeding in which ~~the judge believes~~ the parties or their lawyers might*
16 *reasonably consider this information relevant to the question of*
17 *disqualification under Code of Civil Procedure section 170.1, even if the*
18 *judge concludes there is no actual basis for disqualification.*